



5 November 2009

RECEIVED
13 NOV 2009
BY: MIA

C/- PO Box 337
Civic Square, ACT, 2608
Ph: (02) 6257 2931
Fax: (02) 6257 4801
www.welfare-rights.org.au

Committee Secretary
Joint Standing Committee on Migration
Department of House of Representatives
PO Box 6021
Parliament House, Canberra ACT 2600
Email: jscm@aph.gov.au

Submission No 84

Dear Committee,

re: Inquiry into Immigration Treatment of Disability

The National Welfare Rights Network (NWRN) welcomes the opportunity to provide input into the Committee's Inquiry into Immigration Treatment of Disability.

We congratulate the Government for initiating this inquiry, and agree with other submitters that a review of the migration health criteria is long overdue. The perspective we bring to this inquiry is as a national peak body of 14 community legal centres throughout Australia which specialise in Social Security law and its administration by Centrelink. Whilst our members do not specialise per se in refugee and migration law and policy, we do see some of the harsh and discriminatory impacts the current health test has through the daily casework undertaken by member centres. We have also seen the serious gaps that have developed in Australia's Social Security safety net, through the failure of Government across portfolios to take appropriate measures which promote and protect the rights and dignity of persons with disabilities. While migration treatment of disability and Social Security treatment of migration and/or disability are different issues they coalesce around some individuals' cases.

The NWRN is a network of services throughout Australia that provide free and independent information, advice and representation to individuals about Social Security law and its administration through Centrelink. For member details, services and information visit: www.welfare-rights.org.au

Post ratification of the Convention on the Rights of Persons with Disabilities (CRPD) there is no justification for Australia's migration laws to discriminate against people with disabilities. Moreover, the removal of discriminatory laws in this area also imposes a positive obligation on Government to ensure access by persons with disabilities to appropriate levels of income support and other public provision of financial assistance, particularly in relation to disability-related expenses, education, housing and support services.

Accordingly, our recommendations are:

1. That Australia withdraws its interpretive declaration to the CRPD which effectively excludes its application to Australia's migration laws;
2. That Australia's migration health requirements are overhauled to ensure that they are consistent with its obligations under the CRPD and its other international human rights obligations; and
3. That Australia's Social Security system is reformed to abolish residential waiting periods at least in so far as it affects people with disabilities.

The Framework: Convention on the Rights of Persons with Disabilities (CRPD)

The CRPD marks a fundamental shift away from a medical model of disability to a social model of disability, which mandates the right of people with disabilities to be treated on an equal basis with others in all aspects of life. The CRPD seeks to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity.

Currently, Australia's migration law and policy offends the overarching intent of the CRPD by imposing a medical model of disability. This clearly discriminates against people with disabilities as they are more likely to be excluded from Australia's migration program because of the application of the health test. The "one fail all fails" system then amplifies that act of discrimination against all members of the family who have made a visa application. The policy therefore clearly discriminates against family or associates of people with disability, another aspect of the Convention's regard.

In line with the CRPD, we advocate a shift away from a medical model of disability framework for the assessment of people with disabilities under the visa application process. Also, we do not believe that it is appropriate to put a monetary value on the economic and social cost of people with a disability and their families seeking to migrate to Australia. This process leads to arbitrary and unfair outcomes and attempts to place a value on the worth of any individual in society which is a degrading and negative process.

The act of valuing the disability seems inherently to undervalue the person. Rather the development of migration policy in this area should inherently respect the difference and acceptance of persons with disabilities as part of human diversity and

humanity. Migration policy should reflect the invaluable contributions made by persons with disabilities to the overall well being and diversity of their communities rather than exclude such participation through the impost of an economic cost on disability.

Whilst we concede some restrictions are genuinely imposed to protect the Australian community from public health threats, we believe that Australia's migration laws should uphold the freedom of persons with disability to enjoy liberty of movement and nationality on an equal basis with others. The cost to the public purse is a very different test to the costs to public health.

The right of a person with a disability to choose their residence and nationality on an equal basis with others is enshrined in Article 18 of the CRPD as follows:

Article 18 - Liberty of movement and nationality

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:
 - a. Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
 - b. Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
 - c. Are free to leave any country, including their own;
 - d. Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.
2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

We submit that the current disability related health criteria should be reformed to reflect CRPD's non discriminatory approach to migration for people with disabilities. In doing so, Australia should also withdraw the interpreter declaration to the CRPD which states:

Australia recognises the rights of persons with disability to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others. Australia further declares its understanding that the Convention does not

create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria.

Social Security law also in need of reform

NWRN strongly agrees with the call of the National Ethnic Disability Alliance for the Australian Government to commit to reform in the area of Social Security law as part of its implementation plan for CRPD. While not strictly part of the terms of reference the issues are closely related in many individual cases.

NWRN has long been critical of Social Security residential waiting periods on the grounds that they are counterproductive to effective settlement programs and can result in extreme hardship for the small percentage of migrants who cannot find work and have no means of support. This is particularly so for people with disabilities who are subject to both the two year waiting period which applies to most Social Security payments and the Health Care Card and a ten year residential waiting period for Disability Support Pension.

The two year waiting period also applies to Special Benefit, a payment intended to alleviate situations of severe financial hardship where a person is not qualified for income support and does not have a reasonable means of support, unless they can establish that they are in "financial hardship" because of a "substantial change in circumstances". Because the policy and case law has generally required the change of circumstances to have occurred since arrival in Australia, a person with a disability prior to coming to Australia is excluded from accessing income support however dire their circumstances may be. This places those unable to obtain work in significant hardship and denies them the support they need to integrate and establish themselves in the critical first years of settlement.

For people with disabilities, the hardship is compounded by the extended waiting period to qualify for the Disability Support Pension, which results in people languishing on lower rates of payments for many years, struggling with inappropriate activity test requirements and without access to essential disability related services which are tied to the receipt of the Disability Support Pension. The situation is worse for New Zealanders who have taken advantage of the special arrangements which enable them to live in Australia indefinitely without being subject to the usual migration processes but are generally not eligible for Social Security payments even if they are destitute.

Article 26 of the CRPD applies and extends the traditional rights to an adequate standard of living and Social Security to persons with disabilities. The article requires State Parties to recognise the right of persons with disabilities to social protection and poverty reduction. Yet, the residential waiting periods for Social Security payments imposed on newly arrived migrants are at odds with this obligation. These policies are clearly at odds with the Government's stated social inclusion agenda and are a stark example of a measure that causes social exclusion. Reform of the waiting periods are required to reduce social exclusion and ensure Australia's compliance with its international legal obligations.

For your consideration.

Yours faithfully,



Kate Beaumont
President
National Welfare Rights Network

